

# SENATE RECORD VOTE ANALYSIS

104th Congress  
2nd Session

Vote No. 30

March 13, 1996, 2:27 p.m.  
Page S-1933 Temp. Record

## OMNIBUS APPROPRIATIONS/Endangered Species Listings

**SUBJECT:** **Balanced Budget Downpayment Act, II . . . H.R. 3019. Reid motion to table the Hutchison/Kempthorne amendment No. 3479 to the Reid amendment No. 3478 to the Hatfield modified substitute amendment No. 3466.**

### ACTION: MOTION TO TABLE FAILED, 49-51

**SYNOPSIS:** As introduced, H.R. 3019, the Balanced Budget Downpayment Act, II, will make rescissions and will provide appropriations for fiscal year 1996 for the five regular appropriations bills that have not yet been signed into law (three of those bills have been vetoed, one has been stalled by a Senate Democratic filibuster on its conference report, and one has been stalled by a Senate Democratic filibuster against even beginning its consideration).

The Hatfield modified substitute amendment contains the text of S. 1594, as reported, which is the Senate's version of the bill. The amendment would increase spending by \$1.2 billion over the House-passed amount, and would create a \$4.8 billion contingency fund to accommodate part of the additional \$8 billion in spending requested by President Clinton (funds would not be released unless offsets were identified and enacted; President Clinton did not ask for or identify any means of paying for his increased spending proposals). As amended, the contingency fund was reduced due to increased education spending with offsets (see vote No. 27).

The Reid amendment would strike the continuation of the moratorium on listing new species under the Endangered Species Act and would provide \$4.5 million for new listings. The amendment would be paid for by rescinding and reprogramming funds from within the Fish and Wildlife Service.

**The Hutchison/Kempthorne amendment** to the language proposed to be stricken by the Reid amendment would earmark \$750,000 for all activities under the Endangered Species Act except the final listing of a species as threatened or endangered or the final listing of habitat as critical habitat. Such final listings would be prohibited unless the Secretary of the Interior determined an emergency existed that required a final listing to be made. An emergency listing would be made in extreme situations of dire imminent threat to a species' continued existence. (The Endangered Species Act expired in 1992; it had a sunset date on the expectation that Congress would reauthorize it in 1992 with any changes that the Act's implementation had shown were advisable.

(See other side)

YEAS (49)			NAYS (51)			NOT VOTING (0)	
Republicans (7 or 13%)	Democrats (42 or 89%)		Republicans (46 or 87%)	Democrats (5 or 11%)		Republicans (0)	Democrats (0)
Chafee	Akaka	Kerrey	Abraham	Helms	Breaux	<b>EXPLANATION OF ABSENCE:</b> 1—Official Business 2—Necessarily Absent 3—Illness 4—Other  <b>SYMBOLS:</b> AY—Announced Yea AN—Announced Nay PY—Paired Yea PN—Paired Nay	
DeWine	Baucus	Kerry	Ashcroft	Hutchison	Conrad		
Gregg	Biden	Kohl	Bennett	Inhofe	Dorgan		
Jeffords	Bingaman	Lautenberg	Bond	Kassebaum	Ford		
Roth	Boxer	Leahy	Brown	Kempthorne	Johnston		
Specter	Bradley	Levin	Burns	Kyl			
Thompson	Bryan	Lieberman	Campbell	Lott			
	Bumpers	Mikulski	Coats	Lugar			
	Byrd	Moseley-Braun	Cochran	Mack			
	Daschle	Moynihan	Cohen	McCain			
	Dodd	Murray	Coverdell	McConnell			
	Exon	Nunn	Craig	Murkowski			
	Feingold	Pell	D'Amato	Nickles			
	Feinstein	Pryor	Dole	Pressler			
	Glenn	Reid	Domenici	Santorum			
	Graham	Robb	Faircloth	Shelby			
	Harkin	Rockefeller	Frist	Simpson			
	Heflin	Sarbanes	Gorton	Smith			
	Hollings	Simon	Gramm	Snowe			
	Inouye	Wellstone	Grams	Stevens			
	Kennedy	Wyden	Grassley	Thomas			
			Hatch	Thurmond			
			Hatfield	Warner			

A moratorium on listing new species was first enacted in March of 1995; see 104th Congress, 1st session, vote Nos. 106-107. That moratorium had the same provisions as does the Hutchison/Kempthorne amendment, except that it did not have emergency listing authority. Continuing resolutions for fiscal year 1996 have extended the moratorium. This bill also contains that language with out emergency listing authority and with \$750,000 in funding. During periods between continuing resolutions the Administration did not use its authority to rush through new final listings.)

Debate was limited by unanimous consent. Following debate, Senator Reid moved to table the Hutchison/Kempthorne amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

NOTE: Following the vote, the Hutchison/Kempthorne amendment, and the Reid amendment, as amended, were adopted by voice votes.

**Those favoring** the motion to table contended:

We opposed the moratorium on listing new species when it was first enacted and we still oppose it. During the moratorium, species of plants and animals may become extinct. Once gone, there is no way to retrieve a species. Every Senator knows that the Endangered Species Act (ESA) has some problems, but every Senator also knows that it meets its mission, despite its problems. For example, America's symbol, the bald eagle, has been brought back from the brink of extinction. The sensible thing to do is to continue funding the ESA and enact fixes. An imperfect law is better than no law and no protection for species that have not yet been listed.

In arguing against the Hutchison/Kempthorne amendment we are not merely being the standard bearers for environmentalists. We agree with environmentalists that all species should be preserved for their own intrinsic worth, but we also agree with the scientific community that argues for preservation because of the potential utility endangered species have for mankind, and we also agree with the evangelical groups that argue that we have a sacred duty to protect the species that God has created. When Noah took animals on the Ark, he took all of them; he did not pick and choose. If we continue with this moratorium, we will be picking and choosing--some plants and animals that need to be listed will not be listed, and they will become extinct.

The emergency authority in the amendment will not be enough to prevent this result. Emergency listings are only made when a species is right at the brink. By that time, as a practical matter, it is difficult to prevent extinction. Recovery efforts are more costly and less likely to succeed. We see no logic in only permitting recovery efforts when they will be more costly and less likely to succeed.

The ESA has many critics in the Senate. Those Senators are working to reform the Act, but we think they would probably work with greater haste if new listings under the old, imperfect ESA were still allowed. Defeating the Hutchison/Kempthorne amendment and then passing the Reid amendment would put pressure on critics of the ESA to join us in quickly enacting a reauthorization bill with fair reforms. We therefore urge Senators to join us in tabling this amendment.

**Those opposing** the motion to table contended:

No species have been lost but tens of thousands of Americans have been saved from the financial ruin they would have suffered if the bureaucrats administering the ESA had not been restrained by the current moratorium. The moratorium does not undo any of the damage that has already been done, nor does it stop the bureaucrats at the Fish and Wildlife Service from preparing to inflict huge new hardships in the name of some new bug or mold they have discovered and decided is endangered. All the moratorium stops is the listing of new species.

The moratorium was imposed last year as the first step in reauthorizing the ESA. The reauthorization of that Act, which was supposed to happen in 1992, has been delayed because radical environmentalists are in no hurry to see it reformed. They are pleased with the bureaucratic misapplication of the ESA, and they have successfully lobbied Members of Congress not to reauthorize it but to continue funding. Stopping funding of new listings, though, puts pressure on the environmentalists to agree to a reauthorization of, and reforms to, the ESA. Though progress has been made in crafting a reauthorization bill, an agreement has not yet been reached.

When the moratorium was first proposed, we did not expect that it would take as long as it has to work out an agreement. Therefore, due to the length of time that negotiations are taking, we think that some listing authority should be given for truly emergency situations. This bill will provide that emergency listing authority. When immediate action is necessary to prevent extinction of any species of plant or animal, it may be taken, however economically disastrous it may be for some Americans.

The problem with the way the ESA has been applied in recent years is that no consideration has been given to the costs that are imposed even when the most minimal of benefits have been sought. Our colleagues tell us that Noah brought all the animals on the Ark; in response, if Noah were alive today, he and every other animal would drown before he received the permits he needed to cut down the trees to build the Ark. In Tennessee, he would not be able to cut a single tree from 100,000 acres that have been set aside for 7 cockaded woodpeckers; in the Pacific Northwest, he would be blocked from cutting timber from more than 4 million acres that are home to approximately 25,000 threatened ("threatened" is a less severe listing than "endangered") marbled murrelets, even though approximately 300,000 of those birds are found in Alaska. All across America people are losing their property rights due to the

**MARCH 13, 1996****VOTE NO. 30**

---

zealous misapplication of the ESA. In Texas, the Government tried to set aside an area the size of Rhode Island to protect the Golden Cheek Warbler, and it made it illegal in vast areas to cut cedar as part of its efforts to protect that bird. The problems with that particular edict are that many people are very allergic to cedar pollen, and cedar absorbs water so readily that when it is upstream from farms and ranches those farms and ranches lose their water supply. The result is that property values have plummeted. We know one lady in Texas who invested in land for her retirement that was worth \$830,000 in 1990 but is now worth only \$30,000 because it has been designated golden cheek warbler habitat. All Senators have heard similar horror stories from constituents in their States.

Presently there are 900 domestic species that are on the threatened or endangered lists. Until a few weeks ago, there were 4,000 more species under consideration for listing. Under pressure from some Members, and perhaps in anticipation of this debate, the Fish and Wildlife Service reviewed its candidate list and now only has 182 candidate species. All of a sudden, it no longer finds it so urgent that it enact draconian restrictions on the use of private property to protect 3,800 of these candidate species. The Service now admits that it does not have enough information on these species to say that they are endangered or threatened.

Reforms are clearly needed, and we are working hard to enact those reforms. Hearings have been held, and legislation has been drafted. Unfortunately, those same Senators who oppose the Hutchison/Kemphorne amendment are also opposed to the reforms of the ESA. They oppose the moratorium, and they oppose the reforms. In other words, they want to preserve the status quo. If we allow the moratorium to be lifted, there will be no pressure on them to work with us to find a compromise solution. We believe we are already being very reasonable--current restrictions that are in place that we know are unnecessary are unaffected. Only new outrages are prohibited. We urge our colleagues to join us in continuing the moratorium of new listings until such time as we finally pass reforms of the ESA.